

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 104

ALEXANDER TCHEREPNIN, ET AL., PETITIONERS

v.

JOSEPH E. KNIGHT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

**REPLY MEMORANDUM FOR THE SECURITIES AND EXCHANGE
COMMISSION AS AMICUS CURIAE**

The Securities and Exchange Commission files this memorandum to clarify two matters dealt with in the brief for respondents Knight and Hulman.

1. With respect to the registration as brokers of persons who solicit deposits on behalf of savings and loan associations, respondents state that "[s]uch registration requirement was innovated after the SEC filed its *amicus* brief in the trial court in 1964." (Knight Br. p. 24, n. 53). Respondents are mistaken. Each of the solicitors of savings and loan share accounts to which we referred in our earlier brief (p. 24, nn. 19 and 20 and accompanying text) had been registered with the Commission as a broker-dealer pursuant to Section 15 of the 1934 Act, 48 Stat. 895, prior to the

(1)

commencement of this action on July 24, 1964 (R. 2).¹ Respondents have perhaps been confused by the fact that the Commission did not adopt Form SECO-3 until 1965. That form sought from all registered brokers and dealers who were not members of a registered national securities association information concerning, *inter alia*, the "Principal Type of Securities Business Engaged in" and included, among fourteen possible alternative responses, "Solicitor of savings

¹ For example, the registration of B. C. Morton & Co. Inc., became effective on May 15, 1953. See SEC file No. 8-3532-1, Letter from Anthon H. Lund, Director, Division of Trading and Exchanges to B. C. Morton & Co., Inc., May 15, 1953. As indicated in our earlier brief² (SEC Br. p. 24 n. 19), a certificate in that file shows that in 1961 the firm was engaged exclusively as a solicitor of savings and loan deposits. The registration of Leonard Goldberg became effective April 2, 1955. See SEC File No. 8-4100-1, Letter from Harold C. Patterson, Director, Division of Trading and Exchanges to Mr. Leonard Goldberg, April 1, 1955. In November of that year the registrant reported that "the only activity under the jurisdiction of the Securities and Exchange Commission that I have engaged in has been the opening of savings and loan association accounts on behalf of several clients." See SEC File 8-4100-1, Statement of Financial Condition for the Year 1955, filed November 16, 1955. The Registration of Barber & Kane, Inc. became effective January 22, 1956. See SEC File No. 8-4819-1, Letter from Philip A. Loomis, Jr., Director, Division of Trading and Exchanges to Barber & Kane, Inc., January 20, 1956. In January 1959, that registrant's president certified that "The Security Business of Barber & Kane, Inc. consists solely of the soliciting of investment funds for insured savings and loan associations * * *." See SEC File No. 8-4819-1, Certificate, filed January 21, 1959. The most recent of the registrations of the broker-dealers whose files were referred to in our earlier brief was that of Meyers-Pollock-Robbins, Inc., the registration of which became effective on December 27, 1963. See SEC File No. 8-11797-1. Letter from Anna M. Geiselman, Chief, Branch of Broker-Dealer and Investment Adviser Registration to Meyers-Pollock-Robbins, Inc., December 27, 1963.

and loan accounts.”² In issuing the form, however, the Commission did not impose any new registration requirements; it merely sought information about the nature of the existing registrants’ businesses.

2. Respondents state that the Commission was “in error in quoting from S. Rep. No. 792, 73d Cong., 2d Sess. 14 (1934)” to the effect that the term “security” was defined in the Securities Exchange Act to be “substantially the same as [that contained] in the Securities Act.” (Knight Br. 19) They rely upon the fact that this Senate Report was based upon the definition in S. 3420, which they suggest (Knight Br. pp. 19-20, and n. 45) may have been materially different from that contained in the Act as passed. However, an examination of S. 3420 shows that the definition contained therein was identical to that finally enacted except that S. 3420 contained a somewhat broader exclusion for short-term paper than does the 1934 Act. Thus S. 3420 provided that the term “security”

* * * shall not include currency or any note, draft, bill of exchange, or banker’s acceptance, *or any other similar obligation, which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the*

² Form SECO-3 was adopted in conjunction with the adoption of Rule 15b8-1, 17 CFR 240.15b8-1, under the Securities Exchange Act of 1934. That Rule “establishes qualifications requirements and fees for registered brokers and dealers who do an over-the-counter business and who are not members of a national securities association registered with the Commission and their principals, salesmen, and other associated persons,” and was adopted pursuant to provisions contained in the Securities Acts Amendments of 1964, 78 Stat. 565, 572-573. See SEC Securities Exchange Act Release No. 7697, September 7, 1965.

time of issuance of not exceeding nine months * * *. [Italicized words omitted from statute as enacted.]

Respondents can hardly draw comfort from the deletion of the italicized language, since that solitary change necessarily tended to broaden, not to narrow, the definition which the Senate Report had characterized as substantially the same as that contained in the Securities Act. The change does suggest, however, the error of the court below (R. 47, 50) and of respondents (Brief for City Savings Association pp. 16-17; Knight Br. pp. 34-38) in relying upon some similarity between savings and loan share accounts and the short term paper excluded from the definition contained in the Act as passed. Even if there were such a similarity, the language of S. 3420, which would have extended the exclusion to "any other similar obligation," was expressly rejected by the conference committee in favor of the language of the House bill which was adopted. Thus, the exclusion was deliberately narrowed to the instruments explicitly described.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PHILIP A. LOOMIS, Jr.,
General Counsel,

DAVID FERBER,
Solicitor,

RICHARD E. NATHAN,
Attorney,

Securities and Exchange Commission.

NOVEMBER 1967.